

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

UNITED STATES OF AMERICA

RESPONDENT

v.

Criminal No. 4:03-CR-40008  
Civil No. 4:09-CV-4117

LAIF DOUGLAS POULTON

MOVANT

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Motion for Credit for Time Spent in Custody (Doc. 76)<sup>1</sup> filed herein by LAIF DOUGLAS POULTON, (hereinafter referred to as “Movant”) an inmate confined in the Arkansas Department of Corrections. No response was ordered by the Court. The Motion was referred for findings of fact, conclusions of law, and recommendations for the disposition of the case.

**A. Background**<sup>2</sup>:

This Court previously set out the procedural background of this case, including the criminal proceedings that led to Movant’s incarceration and the instant motion in its Report and Recommendation of February 26, 2009, and will not repeat that history here. (Doc. No. 53).

**B. Discussion:**

Movant has previously filed the following motions or petitions seeking post-conviction relief in this court:

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<sup>1</sup>References to pleadings contained in the Court’s file will be to the docket number (Doc. \_\_\_\_). References to the transcript of the April 10, 2008 revocation hearing will be (Tr. \_\_\_\_).

<sup>2</sup>The background in this case is taken from the pleadings of the parties in the pending motions and the Court’s files from the underlying criminal case.

1. Motion to Vacate Sentence under 28 U.S.C. §2255 (Doc. No. 31), filed September 19, 2008. This Motion was denied by the Court and is pending appeal in the United States Court of Appeals for the Eighth Circuit.

2. Alternative Motion for Credit for Time Served (Doc. No. 32), filed September 19, 2008. This Motion was denied by the Court and is pending appeal in the United States Court of Appeals for the Eighth Circuit.

3. Petition for Habeas Corpus Relief pursuant to 22 U.S.C. §2241, *see Poulton v. USA*, No. 4:09-cv-4030. This Petition sought, in part, the same relief sought by the Motion to Vacate and Alternative Motion for Credit for Time Served. It was denied by the Court and is pending appeal in the United States Court of Appeals for the Eighth Circuit.

4. Motion for Credit for Time Spent in Custody, *see Poulton v. USA*, No. 4:09-cv-4069. This case remains pending and a response was filed on October 29, 2009. It appears to again raise the same issues raised in the foregoing pleadings however.

Movant now files his second Motion to Vacate pursuant to § 2255. In the instant petition he again seeks the same relief sought in all the foregoing pleadings. This is the fifth pleading seeking essentially the same relief. His original §2255 motion is still pending before the United States Court of Appeals for the Eighth Circuit. He has not sought permission from the Court of Appeals to file a second motion to vacate as required by §2255.

Further, on July 22, 2009, by letter, this Court admonished Movant regarding his repeated filing of claims already addressed or subject to a pending appeal. On August 23, 2009, and September 15, 2009, pleadings were returned to the Movant without filing because they again raised these same issues. Movant continues to ignore the plain wording of both the Statute and this Court's

directives by the filing of the instant Motion.

**E. Recommendation:**

Accordingly, based on the foregoing, it is recommended the instant Motion to Vacate Sentence (Doc. No. 76) be **DENIED**<sup>3</sup>. It is recommended that Movant be barred from further filings in this Court of any matter related to his underlying conviction, revocation or sentence unless he first seeks and obtains permission from the United States Court of Appeals for the Eighth Circuit. It is further recommended the Clerk of this Court be directed to return to Movant any new pleading which Movant attempts to file without first obtaining such permission.

**The parties have ten (10) days from receipt of our report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger *de novo* review by the district court.**

**DATED this 3<sup>rd</sup> day of November, 2009.**

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
U.S. MAGISTRATE JUDGE

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<sup>3</sup> “A federal court may dismiss a claim without an evidentiary hearing where the allegations are frivolous, where the allegations fail to state a constitutional claim, where the relevant facts are not in dispute, or where the dispute can be resolved on the basis of the record.” *Urquhart v. Lockhart*, 726 F.2d 1316 (8th Cir.1984).